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# HIGH COURT OF CHHATTISGARH AT BILASPUR

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH: HON. MR. L.C. BHADOO &
HON. MR. DHIRENDRA MISHRA, JJ

## CRIMINAL APPEAL NO.289 OF 2003

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| APPELLANT | | Abdul Faheem. |
| | Vs | |
| RESPONDENT | | The State of Chhattisgarh. |

## CRIMINAL APPEAL NO.333 OF 2003

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| APPELLANT | | Radhey Shyam. |
| | Vs | |
| RESPONDENT | | State of Chhattisgarh. |

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JUDGMENT FOR CONSIDERATION

Sd/-
Dhirendra Mishra
Judge

HON'BLE MR. L.C. BHADOO, J

Sd/-
L.C. Bhadoo
Judge

POST FOR JUDGMENT ON 18 APRIL, 2007

Sd/-
Dhirendra Mishra
Judge

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## HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH: HON. MR. L.C. BHADOO &
HON. MR. DHIRENDRA MISHRA, JJ

### CRIMINAL APPEAL NO.289 OF 2003

APPELLANT — Abdul Faheem, son of Shri Mohamed Saleem, aged about 23 years, student, resident of Fareed Nagar, Imam Bada Chowk, Bhilai, Distt. Durg (Chhattisgarh).

Vs

RESPONDENT — The State of Chhattisgarh.

### CRIMINAL APPEAL NO.333 OF 2003

APPELLANT — Radhey Shyam, son of Ram Vachan, aged about 29 years, Occupation- Auto Mistry, resident of Radhika Nagar, Quarter No.44/2, Police Station Supela, Bhilai Distt. Durg (C.G)

Vs

RESPONDENT — State of Chhattisgarh, through District Magistrate, Durg, District Durg (C.G.)

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Present:

Mr. N.K. Mehta, Advocate for appellant in Cr. A. No.289/03.

Mrs. Indira Tripathi, Advocate for appellant in Cr. A. No.333/03.

Mr. Ashish Shukla, Additional Public Prosecutor for the State.

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## J U D G M E N T

(Delivered on 18.4.2007)

Per Dhirendra Mishra, J:

1. Criminal Appeal No.289/2003 & Criminal Appeal No.333/03 are being decided by this common judgment as both these appeals are arising out of the judgment dated 11.2.2003 passed by learned 7th Additional Sessions Judge (Fast Track Court), Durg in S.T. No.378/99 whereby learned Additional Sessions Judge after

holding the appellants guilty for causing homicidal death of deceased Rajesh Choudhary, for causing simple hurt by sharp edged weapon to Amar Gupta and also for possessing weapons of prohibited size i.e. Gupti & Dagger for illegal object, convicted them under Sections 302/34 & 324/34 of the Indian Penal Code and Section 25/27 of the Arms Act and sentenced each of them to undergo R.I. for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo S.I. for six months; R.I. for two years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo S.I. for one month & R.I. for three years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo S.I. for one month respectively. All the sentences were directed to run concurrently.

2. Case of the prosecution, in brief, is that on 2.10.1999 at about 22.35 hrs Amar Gupta (PW-1) lodged a report in the Police Station Bhilai Nagar, District Durg mentioning therein that on 17.9.1999 at about 9.00 p.m. on a terrace beside his house two boys of other locality were talking with a girl of his street. He and Rajesh Choudhary objected whereupon both the boys went away. Today, at about 8.45 p.m. while they were standing in front of Street No.37, Block No.5 and talking, those two boys along with another boy came there on a black colour Hero Honda motorcycle. The other boy was sitting on the Hero-Honda while those two boys came near Rajesh, both were holding knives in their hands and they started assaulting Rajesh on his chest and stomach. When he tried to intervene, the dark complexion boy inflicted knife injury on his thigh, whereupon, he ran towards kitchen garden to pick-up the wooden rafter. In the meanwhile, they started running. However, the mother of Rajesh caught hold of a boy, but that boy ran away leaving his shirt. They fled on the motorcycle. Rajesh has sustained injuries over his chest and stomach. He thoroughly recognizes the three. He and Rajesh were taken to Sector-9, B.S.P. Hospital, Bhilai for

treatment by Ramnarayan Verma, Pramod & Ashok, brother of Rajesh. However, Rajesh died while he was admitted in I.C.U. ward. The incident was witnessed by the neighbourers. Merg intimation (Ex.P-20) was given by Dr. Jeevan Lal Gethle on 2.10.199 at about 22.05 hrs.

3. After registering the F.I.R. (Ex.P-1) under Crime No.448/99 for commission of offence under Sections 324/34 & 302/34 of IPC, the police proceeded for the scene of occurrence. Inquest (Ex.P-6) over the dead body of deceased was prepared in the presence of witnesses after notice (PW-5) to them. The medico-legal examination report (Ex.P-8) of deceased Rajesh was obtained vide Ex.P-8A. Dead body of deceased was sent for postmortem to Government Hospital, Durg, where Dr. S.A. Mandge (PW-4) conducted the postmortem and submitted his report vide Ex.P-11. Blood stained full pant of injured Amar Gupta (PW-1) was taken into possession under Ex.P-2. Spot map of Ex.P-4 was prepared by the Investigating Officer. Bed-head ticket of Ex.P-10 and Admission & Discharge Ticket of Ex.P-12A of the deceased were taken into possession vide seizure memo Ex.P-12. X-ray report of Ex.P-12B of deceased Rajesh was also taken into possession. On the memorandum (Ex.P-1B) of accused Radheshyam weapon of offence, Gupti was taken into possession vide Ex.P-14 and on the memorandum (Ex.P-15) of accused Abdul Fahim, blood stained dagger was taken into possession under Ex.P-6. Blood stained shirt & pant were taken into possession from accused Radhe @ Radheshyam vide Ex.P-19. Blood stained and plain soil was taken into possession from the spot vide Ex.P-21. Shirt, baniyan & slippers of the accused left at the place of incident were taken into possession vide Ex.P-22. Articles seized during investigation i.e. Gupti, Dagger, blood stained clothes of deceased etc were sent for chemical examination to the Forensic Science Laboratory,

Raipur vide Ex.P-28 from where report Ex.P-23B was received. The above articles were further sent to the Serologist vide Ex.P-23C.

4. Medico-legal examination of injured Amar Gupta was obtained from the hospital vide Ex.P-25. Gupti seized from accused Radheshyam was sent to the doctor for examination, who vide Ex.P-26A opined that Injury No.1 present over the body of complainant may be produced by the above weapon. Appellant Abdul Fahim was sent for examination to the Government Hospital, Durg on 4.10.1999 where Dr. A.K. Mishra has examined him and gave his report of Ex.P-27A. After arresting the accused persons, the Executive Magistrate Shri S.R. Mandavi (PW-10) conducted the test identification parade on 5.11.1999 vide Ex.P-3.

5. After completing investigation, charge sheet was filed against the accused/appellants and other co-accused persons namely Rajesh Singh & Ashish Kundu in the Court of Judicial Magistrate First Class, Durg who in turn committed the case to the Court of Sessions Judge, Durg and the same was received on transfer for trial by learned Additional Sessions Judge, who framed charges under Sections 302/34 & 307/34 of the IPC and Section 25/27 of the Arms Act against the accused persons. The accused persons abjured their guilt. The prosecution in order to establish the charges against the accused persons examined 17 witnesses in all. Statements of accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case and stated that they have been falsely implicated and they were shown to the witnesses in the police station. Accused Abdul Fahim has also stated that he was beaten by the police, his head was smashed on wall and thereby he sustained injuries described in Ex.P-27. Accused Radheshyam also pleaded innocence and false implication. The accused persons examined one Lakhan Verma as their defence

witness. After hearing learned counsel for the respective parties, learned Additional Sessions Judge convicted accused Radheshyam & Abdul Fahim and sentenced them as described above. However, he acquitted accused Rajesh & Ashish Kundu of all the charges.

6. Homicidal death of deceased Rajesh Choudhary is not in dispute. Even otherwise from perusal of the statement of eyewitnesses namely Amar Gupta (PW-1), Kaushalya Bai (PW-5), Sunita Kumari (PW-7) and Dr. S.S. Mukhopadhya (PW-3), who examined the deceased when he was alive and gave his examination report of Ex.P-8 as also the statement of Dr. S.A. Mandge (PW-4), who has conducted postmortem over dead body of deceased Rajesh, found the injuries described herein below and opined that the cause of death is shock as a result of injuries sustained by the deceased on his lungs, it is established that the death of Rajesh was homicidal in nature. The following injuries were present over the body of the deceased;-

a. One stab wound 4 x 2.5 cm on the right side border of manubriam sternai on account of which 2nd rib was fractured and one incised wound in the size of 2x1 cm below lungs. Cavity full of blood. Right lung shrunken.

b. One incised wound 3cm below the nipple in the size of 1 x .5 cm deep upto rib.

c. One incised wound below Injury No.2 in the size of 5x5x2 cm.

d. One incised wound in the size of 10x3 cm transversely placed below the left nipple.

e. One stab or puncture wound 13cm below the left nipple antraial auxiliary line 3x2xdeep in pleural cavity underneath lung incised wound in the size of 1x5 cm. Pleural cavity full of blood.

f. One incised wound on left iliac in the size of 3x2x5 cm.

g. One lacerated wound on the left parietal region in the size of 2.5x.5x2 cm.

h. One lacerated wound on the left parietal region in the size of 4x1xdeep upto bone.

i. One liner abrasion on the left elbow in the size of 3 cm.

7. The conviction of the appellants is based on the statement of eyewitnesses Amar Gupta (PW-1), Kaushalya Bai (PW-5) & Sunita Kumari (PW-7) and further on the statement of Ashok (PW-2), who have stated in their deposition that they saw the accused persons assaulting the deceased and that the above witnesses identified the accused persons in the test identification parade conducted by the Executive Magistrate Shri S.R. Mandavi (PW-10)

8. The trial court convicted the appellants by recording the findings as under:-

I. Injured eyewitness Amar Gupta, who has lodged the F.I.R., had seen the accused persons first time on 17.9.1999, thereafter on the date of incident and he has identified the accused persons in the court during evidence. In the F.I.R. he had also given description of two accused persons.

II. The version of Amar found corroborated from the statement of Dharmawati (PW-6), who has stated that on the eve of Ganesh festival she had seen appellant Radheshyam & Abdul in the house of her friend and on that occasion there was some verbal altercation between the appellants and deceased Rajesh & injured Amar. She has also identified the appellants in the court.

III. Kaushalya Bai (PW-4) had also seen two accused persons assaulting her son with the knife, blood was oozing from the injuries and Amar had thrown the bicycle on accused persons. Her statement has been corroborated by her daughter Sunita Kumari (PW-7), who has stated that when her brother Rajesh went to save Amar, the boys left Amar and started assaulting Rajesh with knife, at that time Amar had thrown his bicycle on them. Her mother & Rajesh caught

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hold a boy from his collar whereupon he left his shirt & slippers and fled away by motor cycle.

IV. Neeraj (PW-14), an independent witness, has also corroborated the statement of above witnesses in material particulars.

V. Weapons of offence i.e. Gupti & Dagger were recovered on the basis of information given by the appellants and this fact has been established by witness Jitendra, who has accepted his signatures over the document and also by the Sub Inspector Shri K.L. Tandon (PW-15), who recorded the memorandum and effected seizure.

VI. Test Identification Parade has been held to be doubtful on the ground that the same was conducted belatedly and possibility of the witnesses having an opportunity to see the accused persons in between cannot be ruled out.

VII. The prosecution has failed to adduce trustworthy and reliable evidence against the accused namely Ashish & Rajesh and accordingly, they have been acquitted. The prosecution has further failed to establish that injury sustained by Amar Gupta was of such a nature which could cause his death in the ordinary course, as injury sustained by Amar was simple in nature as per evidence of Dr. Rajeshwar Ram (PW-17).

VIII. Gupti & Dagger of prohibited size were seized from appellants Radheshyam & Abdul Fahim and as such they have committed offence under Section 25 r/w 27 of the Arms Act.

9. Learned counsel for the appellants vehemently argued that conviction of the appellants is based on the test identification

parade, as alleged eyewitnesses have identified the appellants in presence of the Executive Magistrate Shri S.R. Mandavi (PW-10), who conducted the test identification parade. Referring to the statements of Ashok Kumar (PW-2), Koushalya Bai (PW-5) & Sunita Kumari (PW-7) it has been argued that from the statements of these witnesses it is evident that the above witnesses had, in fact, seen the appellants in the police station as also in the court during remand proceedings. Test identification parade was conducted after more than one month from the date of their arrest and there is no explanation for this delay, therefore, identification in the alleged test identification parade looses its significance. It was further argued that the F.I.R. was lodged on 2.10.1999 at about 22.35 hrs by injured eyewitness Amar Gupta (PW-1) and another eyewitness namely Ashok Kumar (PW-2), who was present at the time of lodging of FIR, has admitted that he knew accused Radheshyam & Abdul by their names since before, however he did not disclose their names while giving statement to the police and there is no explanation as to why names of the accused persons are missing from the FIR or statement of this witness. He further argued that so called eyewitnesses are close relatives and friends of the deceased and there are material anomalies in their versions about the incident. Even otherwise there are material improvement, contradictions & omissions in their statements and the court below was not justified in basing the conviction of the appellants on their testimonies.

10. Placing reliance on **Caetano Piedade Fernandes and another Vs. Union Territory of Goa, Daman & Diu** reported in **AIR 1977 SUPREME COURT 135; Somappa Vamanappa Madar Shankarapa Ravanappa Kaddi Vs. The State of Mysore** reported in **AIR 1979 SUPREME COURT 1831; Wakil Singh and others Versus State of Bihar** reported in **AIR 1981 SUPREME COURT 1392; Hari Nath and another Vs. State of U.P.** reported in **AIR 1988**

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SUPREME COURT 345; State of Andhra Pradesh Vs. Dr. M.V. Ramana Reddy and others reported in AIR 1991 SUPREME COURT 1938; Tahir Mohammad and others Vs. State of Madhya Pradesh reported in AIR 1993 SUPREME COURT 931; Rajesh Govind Jagesha Vs. State of Maharashtra reported in AIR 2000 SUPREME COURT 160 & Chittu alias Hemant & Others Vs State of M.P. ( Now C.G.) reported in 2005 (2) C.G.L.J. 67, it has been argued that undisputedly the appellants were arrested on 4.10.1999 and test identification parade was conducted on 5.11.1999 i.e. almost one month after the incident and there is no explanation for this delay in conducting the test identification parade. Moreover, witnesses had an opportunity of seeing the appellants during remand proceedings as also in the police station and therefore, test identification parade looses its significance.

11. Further relying upon the judgments reported in AIR 1997 SC 454 between Devinder Vs. State of Haryana & AIR 1997 SUPREME COURT 1526 between Rehmat Vs. State of Haryana, it is argued that deceased was admitted in the hospital by his brother Ashok Kumar (PW-2) and he was examined by the doctor, however, in the injury report as also in the F.I.R. names of the assailants are missing, though PW-2 Ashok Kumar has categorically stated that he recognized the appellants since before by their names. In the aforesaid circumstances, false implication of the appellants subsequently cannot be ruled out and the appellants deserve to be extended benefit of doubt.

12. We have heard learned counsel for the parties and perused the record as also the impugned judgment.

13. Learned counsel for the appellant extensively referred judgments of Hon'ble Apex Court referred in Paragraph 9 and argued considering the fact that test identification parade was conducted

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after almost a month of the incident and the witnesses had the opportunity to see the accused persons in the police station as also in the court during remand proceedings, therefore, evidentiary value of test identification parade stands eroded and its creditability is lost.

14. So far as the arguments advanced by learned counsel for the appellants with respect to the credibility of test identification parade is concerned, as already pointed out in the foregoing paragraphs that learned Additional Sessions Judge after considering the inconsistencies present in the test identification parade and also considering the delay and possibility of the witnesses having seen the accused persons during remand proceedings or in the police station has held the test identification parade doubtful and the conviction is not based on the test identification parade. Moreover, it is settled law that identification of accused in test identification parade does not constitute substantive evidence and identification in court constitutes substantive evidence. Test Identification Parades are conducted as a rule of caution. If the account given by the eye witness in the court is otherwise reliable and he identifies the accused in the court during trial in appropriate cases conviction can be based on the testimony of such eyewitnesses.

15. Injured Amar Gupta (PW-2) has been examined as eyewitness by the prosecution on whose testimony learned Additional Sessions Judge has heavily relied upon. We propose to examine the testimony of this witness in detail. This witness has lodged the FIR of Ex.P-1 and nature of information given by this witness has already been detailed in Paragraph 2. This witness in his deposition before the trial court has stuck to his version given in the FIR. He has deposed that on the date of incident he and his friend Rajesh were standing in their street, at that time three boys came there

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on motorcycle whom he did not know by names but he knew them by faces and he identified appellants Radheshyam & Abdul Faheem during evidence as the persons who came on the motorcycle. He has further stated that two of them alighted from motorcycle and started assaulting Rajesh. He pointed towards Radheshyam & Faheem and stated that both of them did '*maar-peet*' whereupon he intervened. Pointing towards Radheshyam he has stated that this accused dealt a knife blow on his thigh, whereupon he ran towards Baadi to search Danda, by the time he returned all the three boys had left and crowd had gathered. Rajesh was lying on earth, his mother and sister were holding him, at that time Raju, Bhaiya elder brother of Rajesh came and they took him and Rajesh to Sector-9 Hospital by scooter. Rajesh was admitted in ICU Ward where he died during treatment. Thereafter, he went along with Raju Bhaiya to the Police Station Kotwali and lodged the report. He has further stated that he identified appellants Radheshyam & Abdul Faheem in jail during test identification parade. He has further stated that on 17.9.1999 at the time of Ganesh festival he and Rajesh were watching picture at the place of Ganesh idol. Rajesh saw that someone is standing on his terrace; both of them went to the terrace and saw that Radheshaym & Faheem are talking with a girl. Rajesh recognizes that girl to be of his street, whereupon this witness asked them whether this was the only place to talk to a girl and they reprimanded the two boys. Two accused persons gave number of knife blows to Rajesh and it was difficult to see as to on which part of body they were assaulting. Rajesh sustained injuries over both of his thighs, chest & stomach. In the cross examination, he has stuck to his examination-in-chief that he did not recognize the boys as also the girl with whom they were talking by names at the time of Ganesh festival. He has categorical stated in Para 25 of this statement that he saw the boys coming by motorcycle, he immediately recognized that they were the same

boys whom he had seen on his terrace talking with a girl. He has further stated that while assault was on, mother, sister & brother of Rajesh namely Raju Bhaiya and one neighbour and his son Neeraj had reached there. In the FIR also he had given the description of two assailants by mentioning that amongst the two boys one was dark and other was of whitish complexion. This witness has been cross-examined at length, however, the defence has not been able to elicit anything which makes his testimony unreliable or untrustworthy.

16. Ashok Kumar (PW-2) is the brother of deceased and he has stated that when he learnt that his brother has been assaulted, he ran towards there and saw that his brother & mother had caught hold of accused Radheshyam, but on seeing him Radheshyam fled from there after leaving his shirt & slippers. Thereafter he admitted his brother in Sector-9 Hospital where he died at about 9.25 p.m. and after that he returned to his home. Amar has also sustained injury in the incident and he was also treated in the hospital. Thereafter he went along with Amar to the police station to lodge the report. He has further stated in the cross-examination that he knew the appellants since before, even then he did not disclose their names while giving statement to the police. However, the court below after referring the statement of this witness at length has not based the conviction on the testimony of this witness.

17. Learned counsel for the appellant has referred to the deposition of Ashok Kumar (PW-2) at length and argued that if the statement of this witness is to be believed, then the absence of names of the accused persons in the FIR as also in the MLC report makes the case of the prosecution suspicious. Placing reliance in the matters of Devinder Vs. State of Haryana & Rehmat Vs. State of Haryana (supra) it is argued that in the first information report the names

of accused persons are not mentioned, though in the medico legal report of the victim, he is shown to be conscious and his brother Ashok, who brought him to the casualty, knew the accused persons. In the circumstances, the F.I.R. itself becomes doubtful and the accused persons are entitled to benefit of doubt. The MLC report of Ex.P-8 of deceased Rajesh Choudhary describes that patient was conscious, disoriented, grasping for breath, pulse was feeble, B.P. was 40 mm Hg systolic, heart beating was fast and his condition was very serious. In Para 12 of cross-examination, Dr. Sabsachi Mukhopadhya (PW-3) has stated that the patient was not able to reply, he was muttering and on the basis of information given by Ashok, his brother, he has mentioned that he was attacked by someone.

18. So far as the improvement made by Ashok Kumar (PW-2) is concerned, we are unable to except this argument as this witness is the brother of deceased Rajesh and in fact, had been overenthusiastic in the success of the trial and therefore, he has improved upon his diary statement of Ex.D-2. However, lack of credibility of this witness will not affect the credibility of other witnesses particularly Amar Kumar Gupta (PW-2), who is the lodger of FIR and also sustained injury in the same incident.

19. Kaushalya Bai (PW-5), who is mother of deceased, is another important eyewitness whose presence has been admitted by eyewitness Amar on the place of incident. This witness has stated that on 2.10.1999 at about 8-9 p.m. she returned from the temple and was sitting near the door of her house, as other family members and neighbourers were strolling on the road. When she heard the cries of her son, she and her daughter Sunita rushed and saw that her son was being beaten. Pointing towards Radheshyam & Abdul Faheem she has stated that both of them were assaulting her son, accused Ashish was sitting on the start

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motorcycle and accused Rajesh was standing with the bicycle. Blood was oozing from the chest, stomach, thighs and legs of her son. She was shouting and at that time Amar was also present with the bicycle, he threw his bicycle over the accused persons whereupon they assaulted Amar by knife on his right thigh. Her son Ashok came there on hearing their screams. She and her son Rajesh caught hold of accused Radheshyam and another accused, who sustained injury as the bicycle was thrown on him, went and sat over the motorcycle. When accused Radheshyam saw her son Ashok coming, he fled from there after leaving his shirt and chappal on the place of incident. All the accused persons fled by motorcycle and after one month she recognized the accused persons in the test identification parade. Except some minor contradictions and omissions in the statement of this witness, this witness has corroborated the statement of PW-1 Amar in material particulars. The incident took place near the house of deceased and this witness, therefore, presence of this witness on the place of incident is natural.

20. Dharmavati (PW-6) has stated that she recognizes the accused Radheshyam & Abdul Faheem. Her uncle namely Ramanand resides at Radhika Nagar in the house of accused Radheshyam as tenant. Whenever she went to her uncle's house, she used to meet the mother and sister of Radheshyam. Radheshyam was brought by her uncle upon which her father had given Radheshaym employment and thus they had family relationship with Radheshyam. Both the appellants regularly came to her house. In the eve of Ganesh festival, she had gone with her sister to watch video, at that time her sister felt thirsty whereupon she took her to her friend Sarla's house. While she was returning after drinking water, Radheshyam stopped her on the pretext that he wants to talk and at that time 8-9 boys came there. Her friend resides on the top floor of two storied building, there she had gone to drink water,

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before her house Radheshyam asked her to stop on the pretext that he has some work and at that time 8-9 boys came there as a result of which she came down. However, she has expressed ignorance that the accused persons had any quarrel with others.

21. PW-7 Sunita Kumari is the real sister of deceased Rajesh and she has stated in her evidence that she recognizes accused Radheshyam. She has also stated that at about 9 to 9.30 p.m. on the date of incident while she was strolling in the street, she saw that two boys were assaulting Amar with a knife, when her brother Rajesh came in defence of Amar, they started assaulting Rajesh with the knife. At that time Amar had thrown his bicycle over those boys which hit the head of one boy. Her mother and brother Rajesh had caught hold of one boy by his collar, however, that boy fled from there on seeing her brother Ashok coming. All the boys fled away from there on a motorcycle. She has recognized appellant Radheshyam as the boy who was assaulting her brother.

22. If we see the statements of these four witnesses i.e. Amar (PW-1), Ashok (PW-2), Kaushalya Bai (PW-5) & Sunita Kumari (PW-7), except some minor discrepancies with respect to the details as to who was assaulted first, all the witnesses have corroborated the statement of injured Amar in material particulars. We have already observed elsewhere that account given by witness Ashok Kumar (PW-2) suffers from embellishment for obvious reasons, however, even if the statement of Ashok Kumar (PW-2) is held to be doubtful, the eyewitness account given by Amar is worth reliance and does not suffer from any infirmity. His statement is duly corroborated by promptly lodged F.I.R, the medical evidence of Dr. Sabbesachi Mukhopadhya (PW-3) who has examined Rajesh when he was alive and found injuries caused by sharp edged weapon on various portions of body including chest & stomach as also from the postmortem report prepared by Dr. S.A. Mandge (PW-4).

Amar himself has sustained injury over his thigh in the same incident and his injury has been duly proved by Dr. Rajeshwar Ram (PW-17). Statement of Amar is also corroborated by the statement of Dharmawati (PW-7) who is also a witness of earlier incident at the Ganesh festival when there was some altercation between the appellants and 8-9 boys of the locality.

23. Weapons of offence i.e. Gupti & Dagger have been seized from the appellants on the basis of their disclosure statements. Memorandum and seizure have been proved by the Investigating Officer and the witness of above documents has admitted his signature over the said documents.

24. On the basis of the aforesaid analysis, we are of the considered opinion that the prosecution has been able to establish the charges against both the appellants under Section 302/34 of IPC for causing homicidal death of deceased Rajesh and Section 324/34 of IPC for causing simple hurt to complainant Amar and under Section 25 r/w 27 of the Arms Act for possessing weapons of prohibited size for illegal object.

25. In the result, we do not find any illegality or infirmity in the judgment of the trial court and Criminal Appeal No.289/2003 filed by appellant Abdul Faheem & Criminal Appeal No.333/03 filed by appellant Radheshyam being devoid of any substance are liable to be dismissed and the same are hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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